IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4726 OF 2001

The Principal, K.J.Somaiya College of Arts and Commerce ..Petitioners

Vs.

Mrs.Nalini V.Karnad and Anr ..Respondents

WITH

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3142 OF 2002

The Principal, K.J.Somaiya College of Arts and Commerce ..Petitioners

Vs.

Mrs.Nalini V.Karnad and Anr ..Respondents

Mr.Kiran Bapat for the petitioners

Mr.Mihir Desai a/w Ms.Ushajee Peri for the respondent no.1

CORAM : S.U.KAMDAR, J
DATED : 13TH APRIL, 2006

ORAL JUDGMENT:

1. These two petitions are filed by the petitioners challenging the two orders dt.6.4.01 and 8.4.02 in appeal no.39 of 2000. By an order

dt.6.4.01, the Tribunal has granted condonation of delay in filing the appeal whereas by the final order dt.8.4.02 the appeal of the respondent has been allowed and the order of the College dt.1.8.97 appointing the respondent as a part time teacher instead of full time lecturer has been quashed and set aside with consequent direction to reinstate the petitioners as a full time teacher with all benefits including back wages. Some of the material facts of the present case are briefly enumerated as under:

2. The respondent no.1 was appointed on 8.7.91 as a lecturer in subject of Kannada in Petitioner College. Respondent no.1 holds qualification of B.A. and M.A. with Kannada as principal subject. On 5.10.93 the respondent no.1's services were terminated due to non availability of required number of students in Kannada as the respondent no.1 had declined to take the lectures in foundation course. Against the said order, the respondent no.1 filed an appeal being appeal no.49 of 1996 before the Hon'ble University and College Tribunal, Bombay challenging the order of

termination dt.5.10.93. Before the Tribunal, the respondent no.1 teacher agreed to take lectures in foundation course for First year and Second year students and therefore the petitioner took back the said respondent in terms of the settlement arrived at in appeal no.49 of 1996. On 1.8.97 the petitioner converted the appointment of respondent no.1 from full time lecturer to part time lecturer in foundation course because according to the petitioner one division each of first year and second year students of Commerce for the year 1997-98 was reduced and due to which there was no sufficient work load for the respondent no.1. On 30.3.98 the respondent no.1 approached the grievance committee and forwarded her grievance to the pro-vice chancellor, Chairman of the Grievance Committee, University of Mumbai. On 27.5.98 the petitioner informed the university that the respondent no.1 has been appointed as part time teacher because of non availability of sufficient work load. On 11.1.99 it is the case of the petitioners that both the parties were called before the Grievance Committee and the grievance committee informed the parties that the complaint

before the grievance committee is not maintainable and the parties to take appropriate steps in accordance with law to redress their grievances. However, it is the case of the respondent that she was informed of grievance committee decision only on 8.8.00 orally and therefore she has filed an appeal on 22.8.00 before the University and College Tribunal. On 30.4.01 the respondent no.1 has already attained the age of super annuation and has retired from services.

3. On 6.4.01, the Tribunal passed an order granting condonation of delay of 1075 days on the ground that the proceedings were pending before the grievance committee. It is this order dt.6.4.01 has been challenged by the petitioner in writ petition no.4726 of 2001. Ultimately, on 8.4.02, the Tribunal disposed of the appeal finally and by the said order, the Tribunal has directed the respondent no.1 to be reinstated in the post of full time teacher and has further directed that she should be given consequential benefits including the back wages as full time lecturer. Writ Petition no.3142 of 2002 is filed challenging the

said final order passed by the Tribunal in appeal no.39 of 2000. The learned counsel for the petitioners has submitted that the power exercised by the Tribunal for condonation of delay u.s.5 of the Limitation Act is totally perverse and baseless as no sufficient cause has been made out by the respondent no.1 for condonation of delay of 1075 days. It has been contended by the learned counsel for the petitioners that infact the grievance committee rejected the application of the respondent no.1 in a committee meeting dt.14.1.99 and not on 8.8.00 as pleaded by the respondent no.1 in application for condonation of delay. It has been submitted that thus even if the period of application pending before the grievance committee is excluded i.e.14.1.99 still filing of an appeal on 22.8.00 which is more than a year and half, there is no case made out for condonation of delay.

4. On the other hand, the learned counsel for the respondent has submitted that rejection of the application by the grievance committee was only on 8.8.00 and an appeal is filed on 22.8.00. Thus there is no delay of 1075 days. The delay is only

of few days and therefore condonation should be granted. The learned counsel has further submitted that the application is made for 1075 days because there is no provision for extension of time for application pending before the grievance committee and therefore the same is only to show that there is sufficient case made out for the purpose of condonation of delay.

5. I am of the opinion that in a writ jurisdiction under Article 226 of the Constitution of India, the order which is discretionery in nature exercised by the Tribunal for granting condonation of delay should normally not be interfered with. In the present case, there is a dispute on the date on which the grievance committee has rejected the application. Admittedly, the rejection is oral and not in writing. Petitioners are contenting that the same is on 14.1.99 whereas the respondents are contenting that the same is on 8.8.00. In cases of such a nature of dispute, I am of the view that the Tribunal was right and justified in accepting the contention of respondent no.1 in granting

condonation of delay and hearing the appeal on merits. In my opinion, even if the Tribunal has erred it is on the right side of the justice and thus, the order impugned in the said writ petition does not call for any interference. In that light of the matter, the appellate side writ petition 4726 of 2001 has no substance and the same is accordingly dismissed.

6. Now turning to writ petition no.3142 of 2001 which is challenging the final order passed by the Tribunal dt.8.4.02 . The learned counsel for the petitioners has contended that the Tribunal has no Jurisdiction to entertain the appeal on merits. The learned counsel has contended that the Jurisdiction of the Tribunal is u.s.59 of the Maharashtra Universities Act, 1994. The Provisions of s.59 of the said act interalia reads as under:

> "59. (1) Notwithstanding anything contained in any law or contract for the time being in force, any employee (whether a teacher or other employee) in any university, college or recognised institution (other than that managed and maintained by the State Government, Central Government or a local authority), who is

dismissed or removed or whose services are otherwise terminated or who is reduced in rank by the university or management and who is aggrieved shall have a right of appeal and my appeal against any such order shall lie to the Tribunal.

Provided that, no such appeal shall lie to the Tribunal in any case where the matter has already been decided by a court or Tribunal of competent jurisdiction or is pending before such court or Tribunal on the date of commencement of this Act or where the order of dismissal, removal, otherwise termination of service or reduction in rank was passed by the management at any time before the date on which this Act comes into force and in which case the period for filing an appeal has expired.

(2) Such appeal shall be made by the employee to the Tribunal, within thirty days from the date of receipt by him of the order of dismissal, removal, otherwise termination of services, or reduction in rank, as the case may be:

Provided that, where such order was made before the commencement of this Act, such appeal may be made if the period of thirty days from the date of receipt of such order has not expired.

(3) Notwithstanding anything contained in sub-section (2), the Tribunal may entertain an appeal made to it after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

(4) Every appeal shall be accompanied by a fee of four hundred rupees which shall not be refundable and shall be credited to the university fund:

> Provided that it shall be lawful for the State Government to revise, by notification in the Official Gazette, such fees as it may deem fit from time to time."

7. The learned counsel for the petitioners has contended that in the light of the limited Jurisdiction conferred u.s.59 of the Maharashtra Universities Act, 1994, the case of the nature in the present petition is not covered by the said provisions of s.59 of the Maharashtra Universities Act, 1994. It has been submitted that the petitioner is neither dismissed nor removed from service or otherwise terminated and thus, the Tribunal could not have Jurisdiction to entertain the appeal. It has been further submitted that the word ’reduced in rank’ also does not apply in the facts of the present case because there is no reduction in rank. The petitioner was full time lecturer in the foundation course and his services has been converted as part time lecturer. It has been submitted that converting from full time lecturer to part time lecturer does not mean reduction in rank.

8. In support of the aforesaid contention, the learned counsel has relied upon the judgment of the Apex court in the case of Shitla Sahai Srivastava V. General Manager, North Eastern Railway, Gorakhpur reported in AIR 1996 Supreme Court 1197 particularly para 15 of the said judgment which reads as under:

> "(15) Learned counsel for the appellant has relied upon the decision of a Single Judge of the High Court of Calcutta as supporting his contention that the deletion of the appellant's name from the panel would amount to a reduction in rank. That decision is reported as Dineshwar v. Chief Commercial Superintendent, Eastern Railway, AIR 1960 Cal 209. at p.211, the learned Judge observed:
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> "The question is whether the striking of the petitioner's name from the panel, has affected his future right of promotion. In my opinion, the inescapable conclusion is that it has so affected the petitioner. As I have mentioned above, promotion from Class III post to Class II post is to be done according to the recommendations made by Selection Boards. Where there is such a list or a panel, then a person not in the list cannot hope to be promoted. It is implied, that in order to have a chance of promotion, the petitioner would have to be in the selection list, that is to say, in the panel. But with regard to the second contention, viz., that the striking out of his name from the panel affected his chances of future promotion, it is a point of substance and must be upheld. What the

authorities should have done before striking out the name of the petitioner from the panel was to give him as opportunity of showing cause as to why his name should not be struck off from the panel, and the order could only be made after giving the petitioner an opportunity of being heard.

We are of opinion that this is not a correct statement of the laws, in view of the decision of this court in High Court, Calcutta v. Amal Kumar Rov. 1963-1 SCR 437. (AIR 1962 SC 1704). There the facts were these. The respondent was a Munsif in the West Bengal Civil Service (Judicial). When the cases of several Munsifs came up for consideration before the High Court for inclusion of names in the panel of officers to officiate as subordinate Judges, the respondent's name was excluded. He was told by the Registrar of the Court, on a representation made by him, that the Court had decided to consider his case after a year. As the result of such exclusion, the respondent, who was then the seniormost in the list of Munsifs, lost eight places in the cadre of Subordinate Judges before he was actually appointed to act as an Additional Subordinate Judge. He filed a suit praying that a declaration might be made that he occupied the same position in respect of seniority in the cadre of Subordinate Judges as he would have done if no supersession had taken place. his case, in substance was that as a result of the High Court's order he was reduced by eight places in the list of Subordinate Judges, and that in law amounted to reduction in rank within the meaning of Art.311(2) of the Constitution. This Court held at p.453 (of SCR) :(at p.1710 of AIR) as follows:

"In our opinion, there is no substance in this contention because losing places in the same cadre namely, of Subordinate Judges does no amount to reduction in rank,

within the meaning of Art.311(2). The plaintiff sought to argue that 'rank', in accordance with dictionary meaning, signifies 'relativeposition or status or place', according to Oxford English Dictionary. The word 'rank' can be and has been used in different senses in different contexts. The expression 'rank' in Art.311(2) has reference to a person's classification and not his particular place in the same cadre in the hierarchy of the service to which he belongs. Hence, in the context of the Judicial Service of West Bengal, 'reduction in rank' would imply that a person who is already holding the post of a Subordinate Judge has been reduced to the position of a Munsif, the rank of a Subordinate Judge being higher than that of a Munsif. But Subordinate Judges in the same cadre hold the same rank, though they have to be listed in the order of seniority in the Civil List. Therefore, losing some places in the seniority list is not tantamount to reduction in rank. Hence, it must be held that the provisions of Art.311(2) of the Constitution are not attracted to this case."

This decision has established the following principle, viz., the expression 'rank' in Article 311(2) has reference to a person's classification and not his particular place in the same cadre in the hierarchy of the service to which he belongs and, therefore, losing some places in the seniority list is not tantamount to reduction in rank within the meaning of Art.311(2) of the Constitution."

9. By relying on the aforesaid, the learned counsel for the petitioner has contended that

reduction in rank presupposes reduction from one cadre to another cadre which is lower in rank. It has been submitted that appointment as full time lecturer or part time lecturer is neither change of a cadre nor it is a lower rank and therefore the word 'reduced in rank' used in s.59 of the Maharashtra Universities Act, 1994 cannot be applied for the purpose of entertainment of the appeal by the tribunal.

10. On the other hand, the learned counsel for the respondent has relied upon two judgments of this court in the case of Shri Somsingh Chandrasingh Thakur vs. Head Master, Capt.R.M.Oak High School, Autta Ali Kalyan West, Dist.Thane and ors reported in 2004(4) ALL MR 401 and unreported judgment of the learned single Judge of this court in the case of The Principal, Wilson College of Arts and Science Vs. Dr.Ms.Vaishali Dabke and Ors decided on 13.4.05 being writ petition no.1604 of 2002. The learned counsel for the respondent by relying on the aforesaid judgments has contended that the word 'reduced in rank' must be construed in the widest possible meaning so as to cover all

kinds of cases and it should be given a liberal meaning and not restrictive meaning so as to confer the Jurisdiction on the Tribunal rather than denying the same and therefore it has been submitted that the word ’reduced in rank’ appearing in s.59 of the Act must also include all cases where employees services who were in full time and now converted in part time and should be covered by the words ’reduced in rank’.

11. The learned counsel for the respondent has submitted that otherwise there would be various categories of cases which would not be covered by the provision of s.59 of the Act and the Tribunal would not be able to dispense with effective justice when it comes to the case of teachers. He has submitted that in the college there is no reduction in rank because there are no different cadres since there is only post of lecturers and there are no other categories of posts and therefore the word ’reduction in rank’ should be considered and mean all kinds of cases where the pay scale of the employee has been adversely effected and consequently it should be covered by

the meaning of the word ’reduction in rank’.

12. I have considered the rival contention of the parties and I am of the opinion that provision of s.59 of the Maharashtra Universities Act, 1994 is clear when it considers the word ’reduction in rank’ by the management. The word ’reduction in rank’ is a word which is well recognised and well defined under the Industrial and Labour Law. Judgment of the apex court though arose in a case under Article 311(2) of the Constitution, it has considered the expression ’rank’ as meaning a persons qualification in a cadre in the hierarchy of service to which he belongs. In my opinion, for the purpose of ’reduction in rank’ there has to be a rank and the rank means a person must have a cadre and or a designation in a particular cadre in the hierarchy which has been specified in any employment. It cannot be that a person whose pay scales are effected would automatically amount to a reduction in rank.

13. I am of the opinion that if the legislature has decided to confer the restrictive Jurisdiction

on the Tribunal then it is not open for the court to read the word in a manner which would include even those class of cases which are deliberately and intentionally omitted by the legislature while drafting the provisions. The word 'reduced in rank' mean those cases where the employees are shifted from higher grade to lower grade. Whether pay scale is effected or not if the employee is shifted to the lower cadre it would amount to reduction in rank and then only person is entitled to approach the Tribunal u.s.59 of the Maharashtra Universities Act, 1994.

14. I am of the view that in the present case where respondent no.1's rank is not reduced as respondent no.1 was a lecturer and continues to be a lecturer and merely his pay scale is effected by changing her from full time lecturer to part time lecturer would not be covered by virtue of provisions of s.59 of Maharashtra Universities Act and thus, the Tribunal had no Jurisdiction to entertain the said appeal. In that view of the matter, impugned order and judgment dt.8.4.02 is required to be quashed and set aside and the appal

no.39 of 2000 is required to be dismissed. Petition is made absolute accordingly. However, there shall be no order as to costs. In view of the dismissal of petition, petitioner will be entitled to refund of the amount deposited towards the back wages in this court. Petitioners will be at liberty to withdraw the same with accrued interest if any.